

this section is not sufficient to establish that an individual's services in self-employment were or were not substantial, all other factors are considered. The presence or absence of a capable manager, the kind and size of the business, the amount of capital invested and whether the business is seasonal, as well as any other pertinent factors, are considered in determining whether the individual's services are such that he can reasonably be considered retired.

§ 404.450 Required reports of work outside the United States or failure to have care of a child.

(a) *Beneficiary engaged in noncovered remunerative activity; report by beneficiary.* Any individual entitled to a benefit which is subject to a deduction in that month because of noncovered remunerative activity outside the United States (see § 404.417) shall report the occurrence of such an event to the Social Security Administration before the receipt and acceptance of a benefit for the second month following the month in which such event occurred.

(b) *Beneficiary receiving wife's, husband's, mother's or father's insurance benefits does not have care of a child; report by beneficiary.* Any person receiving wife's, husband's, mother's, or father's insurance benefits which are subject to a deduction (as described in § 404.421) because he or she did not have a child in his or her care shall report the occurrence of such an event to the Social Security Administration before the receipt and acceptance of a benefit for the second month following the month in which the deduction event occurred.

(c) *Report required by person receiving benefits on behalf of another.* Where a person is receiving benefits on behalf of a beneficiary (see subpart U of this part) it is his duty to make the report to the Administration required by paragraph (a) or (b) of this section, on behalf of the beneficiary.

(d) *Report; content and form.* A report required under the provisions of this section shall be filed with the Social Security Administration. (See § 404.614 of this part for procedures concerning place of filing and date of receipt of such a report.) The report should be

made on a form prescribed by the Administration and in accordance with instructions, printed thereon or attached thereto, as prescribed by the Administration. Prescribed forms may be obtained at any office of the Administration. If the prescribed form is not used, the report should be properly identified (e.g., show the name and social security claim number of the beneficiary about whom the report is made), describe the events being reported, tell when the events occurred, furnish any other pertinent data (e.g., who has care of the children), and be properly authenticated (e.g., bear the signature and address of the beneficiary making the report or the person reporting on his behalf). The report should contain all the information needed for a proper determination of whether a deduction applies and, if it does, the period for which such deductions should be made.

[32 FR 19159, Dec. 20, 1967, as amended at 49 FR 24117, June 12, 1984; 51 FR 10616, Mar. 28, 1986; 65 FR 16813, Mar. 30, 2000]

§ 404.451 Penalty deductions for failure to report within prescribed time limit noncovered remunerative activity outside the United States or not having care of a child.

(a) *Penalty for failure to report.* If an individual (or the person receiving benefits on his behalf) fails to comply with the reporting obligations of § 404.450 within the time specified in § 404.450 and it is found that good cause for such failure does not exist (see § 404.454), a penalty deduction is made from the individual's benefits in addition to the deduction described in § 404.417 (relating to noncovered remunerative activity outside the United States) or § 404.421 (relating to failure to have care of a child).

(b) *Determining amount of penalty deduction.* The amount of the penalty deduction for failure to report noncovered remunerative activity outside the United States or not having care of a child within the prescribed time is determined as follows:

(1) *First failure to make timely report.* The penalty deduction for the first failure to make a timely report is an amount equal to the individual's benefit or benefits for the first month for

which the deduction event was not reported timely.

(2) *Second failure to make timely report.* The penalty deduction for the second failure to make a timely report is an amount equal to twice the amount of the individual's benefit or benefits for the first month for which the deduction event in the second failure period was not reported timely.

(3) *Subsequent failures to make timely reports.* The penalty deduction for the third or subsequent failure to file a timely report is an amount equal to three times the amount of the individual's benefit or benefits for the first month for which the deduction event in the third failure period was not reported timely.

(c) *Determining whether a failure to file a timely report is first, second, third, or subsequent failure—*(1) *Failure period.* A failure period runs from the date of one delinquent report (but initially starting with the date of entitlement to monthly benefits) to the date of the next succeeding delinquent report, excluding the date of the earlier report and including the date of the later report. The failure period includes each month for which succeeding delinquent report, excluding a report becomes overdue during a failure period, but it does not include any month for which a report is not yet overdue on the ending date of such period. If *good cause* (see § 404.454) is found for the entire period, the period is not regarded as a failure period.

(2) *First failure.* When no penalty deduction under paragraph (b) of this section has previously been imposed against the beneficiary for failure to report noncovered remunerative activity outside the United States or for failure to report not having care of a child, the earliest month in the first failure period for which a report is delinquent and for which *good cause* (see § 404.454) for failure to make the required report is not found is considered to be the first failure.

(3) *Second failure.* After one penalty deduction under paragraph (b) of this section has been imposed against the beneficiary, the first month for which a report is delinquent in the second failure period is considered to be the second failure.

(4) *Third and subsequent failures.* After a second penalty deduction under paragraph (b) of this section has been imposed against the beneficiary, the first month for which a report is delinquent in the third failure period is considered to be the third failure. Subsequent failures will be determined in the same manner.

Example: M became entitled in January 1966 to mother's benefits; these benefits are not payable for any month in which the mother does not have a child in her care. M accepted benefits for each month from January 1966 through June 1967. In July 1967 she reported that she had not had a child in her care in January 1967. As she was not eligible for a benefit for any month in which she did not have a child in her care, M's July 1967 benefit was withheld to recover the overpayment she had received for January 1967, and the next payment she received was for August 1967. No penalty was imposed for her failure to make a timely report of the deduction event that occurred in January 1967 because it was determined that *good cause* existed.

In March 1968 M reported that she had not had a child in her care in September or October 1967; however, she had accepted benefit payments for each month from August 1967 through February 1968. Her benefits for March and April 1968 were withheld to recover the overpayment for September and October 1967. Also, it was determined that *good cause* was not present for M's failure to make a timely report of the deduction event that had occurred in September 1967. A penalty equal to her benefit for September 1967 was deducted from M's May 1968 payment since this was her *first failure* to report not having a child in her care. Payments to her then were continued.

On November 4, 1968, it was learned that M had not had a child in her care in November 1967 or in June, July, or August 1968 although she had accepted benefits for June through October 1968. Consequently, M's benefits for November 1968 through February 1969 were withheld to recover the 4 months' overpayment she received for months in which she did not have a child in her care. In addition, it was determined that *good cause* was not present for M's failure to report the deduction events, and a penalty was imposed equal to twice the amount of M's benefit for the month of June 1968. This was M's *second failure* to report not having a child in her care. No further penalty applied for November 1967 because that month was included in M's *first-failure* period.

(5) *Penalty deductions imposed under § 404.453 not considered.* A failure to

make a timely report of earnings as required by § 404.452 for which a penalty deduction is imposed under § 404.453 is not counted as a failure to report in determining the first or subsequent failure to report noncovered remunerative activity outside the United States or not having care of a child.

(d) *Limitation on amount of penalty deduction.* Notwithstanding the provisions described in paragraph (b) of this section, the amount of the penalty deduction imposed for failure to make a timely report of noncovered remunerative activity outside the United States or for failure to report not having care of a child may not exceed the number of months in that failure period for which the individual received and accepted a benefit and for which a deduction is imposed by reason of his noncovered remunerative activity outside the United States or failure to have care of a child. (See § 404.458 for other limitations on the amount of the penalty deduction.)

[38 FR 3596, Feb. 8, 1973, as amended at 38 FR 9430, Apr. 16, 1973]

§ 404.452 Reports to Social Security Administration of earnings; wages; net earnings from self-employment.

(a) *Reporting requirements and conditions under which a report of earnings, that is, wages and/or net earnings from self-employment, is required.* (1) If you have not reached full retirement age (see § 404.409(a)) and you are entitled to a monthly benefit, other than only a disability insurance benefit, you are required to report to us the total amount of your earnings (as defined in § 404.429) for each taxable year. This report will enable SSA to pay you accurate benefits and avoid both overpayments and underpayments.

(2) If your wages and/or net earnings from self-employment in any month(s) of the year are below the allowable amount (see §§ 404.446 and 404.447), your report should include this information in order to establish your grace year (see § 404.435) and possible eligibility for benefits for those months.

(3) Your report to us for a taxable year should be filed on or before the 15th day of the fourth month following the close of the taxable year; for example, April 15 when the beneficiary's tax-

able year is a calendar year. An income tax return or form W-2, filed timely with the Internal Revenue Service, may serve as the report required to be filed under the provisions of this section, where the income tax return or form W-2 shows the same wages and/or net earnings from self-employment that must be reported to us. Although we may accept W-2 information and special payment information from employers, you still have primary responsibility for making sure that the earnings we use for deduction purposes are correct. If there is a valid reason for a delay, we may grant you an extension of up to 4 months to file this report.

(4) You are not required to report to us if:

(i) You reached full retirement age before the first month of your entitlement to benefits; or

(ii) Your benefit payments were suspended under the provisions described in § 404.456 for all months of a taxable year before the year of full retirement age, or for all months prior to your full retirement age in the full retirement age year, unless you are entitled to benefits as an auxiliary or survivor and your benefits are reduced for any month in the taxable year because of earnings and there is another person entitled to auxiliary or survivor's benefits on the same record, but living in a different household.

(b) *Report required by person receiving benefits on behalf of another.* When you receive benefits as a representative payee on behalf of a beneficiary (see subpart U of this part), it is your duty to report any earnings of the beneficiary to us.

(c) *Information required.* If you are the beneficiary, your report should show your name, address, Social Security number, the taxable year for which the report is made, and the total amount of your wages and/or net earnings from self employment during the taxable year. If you are a representative payee, your report should show the name, address, and Social Security number of the beneficiary, the taxable year for which the report is made, and the total earnings of the beneficiary, as well as your name, address, and Social Security number.